2024 ANNUAL HEALTH CARE COST TRENDS REPORT

POLICY RECOMMENDATIONS

MASSACHUSETTS
HEALTH POLICY COMMISSION

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The bankruptcy and dissolution of Steward Health Care, the third largest hospital system in Massachusetts, led to substantial disruptions in the state's health care market and has taken a significant toll on communities, patients, provider organizations, and health care workers across Massachusetts. Recognizing the HPC's unique role and expertise in health care market monitoring, the HPC has chosen to focus the 2024 Cost Trends Report Policy Recommendations on addressing the causes and consequences of this ongoing tragedy, some of which remain to be seen.

The policy actions detailed below would serve to better protect the health care system, workforce, and patients from predatory actors, strengthen market oversight and transparency, including transactions involving private equity, and ensure greater market stability moving forward. These reforms would also address long-standing market dysfunctions that underlie both financing inequities and the drive to provider consolidation.

In previous years including in the 2023 Health Care Cost Trends Report, the HPC has advanced recommendations such as strengthening the existing health care cost growth benchmark, creating new benchmarks for affordability and equity goals, enhancing oversight of pharmaceutical spending, enhancing accountability from health plans for affordability, increasing investment in primary and behavioral health care, strengthening the health care workforce, addressing administrative complexity, and advancing health equity for all. Urgent action on those recommendations, as well as the reforms described below, will enable Massachusetts to rebuild a stronger health care system that is **affordable, equitable**, and **puts patients first**.

1. **STRENGTHEN AND EXPAND THE STATE'S MARKET OVERSIGHT TOOLS.** Massachusetts' current market oversight processes should be enhanced to allow for better monitoring and accountability of all actors in the health care market.

   A. Strengthen and Expand the Material Change Notice (MCN) Process. One of the key mechanisms through which Massachusetts understands and assesses health care provider transactions (mergers, acquisitions, and other types of affiliations) is the Material Change Notice (MCN) and Cost and Market Impact Review (CMIR) processes. Under current law, an MCN generally must be filed with the HPC when a provider proposes a transaction that involves merging or affiliating with other providers or payers. The HPC can initiate a full investigation, or CMIR, of those transactions it determines are likely to result in a significant impact to health care costs or market functioning in Massachusetts, culminating in a public report on the likely impacts.

   The law authorizing the HPC to review health care provider transactions should be broadened to ensure that all significant health care transactions involving private equity require notice to the HPC. For example, significant new for-profit investment in a provider or the acquisition of a provider by any entity, including private equity investors, should require the filing of an MCN. Additionally, the acquisition of a provider's assets (e.g., real estate) by any entity, including private equity investors, such as in a sale-leaseback, should require notice and review. Expanding the filing requirements in these ways would allow for both public notice and thorough HPC review of a broader range of transactions. It would also provide additional insight into the potential cost, quality, access, and equity impacts of transactions before new private equity investments in or sales of health care providers occur in Massachusetts. Similar to approaches used in other states, the Commonwealth should consider a process for imposing conditions upon parties to transactions. Potential conditions that could be applied to concerning transactions include requirements that essential services be maintained for a specific period of time, ongoing compliance monitoring and public reporting, requirements to ensure financial stability, such as limitations on financially risky activities, and other conditions related to subsequent sales of provider investments (e.g., exits).

2. **STRENGTHEN AND EXPAND THE STATE'S TRANSPARENCY REQUIREMENTS.** While Massachusetts has greater transparency into health care market functioning than many other states, current transparency processes should be enhanced to ensure a better understanding of the entire health care provider market, including sectors with significant for-profit and private equity investment.

   A. Require that New Provider Types, including Types Frequently Targeted by Private Equity Investors, Report to the Massachusetts RPO Program. The Massachusetts

Registration of Provider Organizations (RPO) program collects key information about the organizational structure, affiliations, and financial status of the largest health care providers in Massachusetts. These publicly available data are a critical source of information for health care oversight agencies, law enforcement, and interested stakeholders. However, under current law, the RPO program may only collect information from providers with significant revenue from commercial insurers, which largely excludes behavioral health providers, nursing homes, and other provider types that have been frequently targeted by private equity investors. This statute should be updated to allow the RPO program to collect information from a broader range of provider types, including those with revenue primarily from self-pay sources, Medicare, and Medicaid.

B. Enhance Enforcement Mechanisms for Financial Reporting. Hospitals and other health care providers are required to provide key financial information to CHIA and the HPC through the Massachusetts RPO program and other authorities. Notably, notwithstanding financial penalties, Steward Health Care System did not submit its financial statements as required for 2017-2022, and instead filed suit against the Commonwealth. Given the importance of financial oversight, the Commonwealth should strengthen enforcement mechanisms to ensure compliance with state-mandated financial reporting.

3. REVITALIZE HEALTH PLANNING TO ENSURE THAT THE SUPPLY OF HEALTH SERVICES ALIGNS WITH COMMUNITY HEALTH NEEDS AND TO PROTECT THE INTERESTS OF HISTORICALLY UNDERSERVED COMMUNITIES.

Recent health care market activity, including the closures of Carney Hospital and Nashoba Valley Medical Center as well as some recent proposed provider expansions, has highlighted the need for a better understanding of the allocation of health care resources across the Commonwealth and its implications for quality, affordability, and equity of care. A revitalized approach to health planning could support efforts to ensure that providers are focused on providing services needed by Massachusetts residents, and not only those services that are the most profitable. There is also opportunity to enhance the current regulatory framework to proactively plan and prepare for changes in services and better prioritize the public interest over market forces that may be at odds with that interest. Specifically, the HPC recommends:

A. Conduct Focused Assessments of Need, Supply, and Distribution. The Commonwealth should conduct focused, data-driven assessments of the supply and distribution of services based on identified needs or disparities in outcomes. Such targeted assessments would identify specific provider types or service lines that warrant examination (e.g., obstetrics, mental health and substance use disorder outpatient treatment, inpatient pediatric care, oncology, etc.) with respect to geographic distribution, access, cost, and other factors in the public interest, such as specific populations served. The examination could also include an evaluation of the current and future workforce needs of the specific provider type or service lines, necessary to forecast areas of shortages. Formal findings of an assessment could include designating a specific set of services or class of providers as critical to the proper functioning of the Massachusetts health care system, identifying barriers impacting accessibility of available supply by specific populations, and making recommendations to address misalignment of need, supply, and distribution.

B. Strengthen Tools to Monitor and Regulate Supply of Health Care Services. Massachusetts' existing frameworks for monitoring and regulating provider supply and distribution, including its Determination of Need (DoN) Program and Essential Services Closures process, can be strengthened as follows:

i. **Strengthen the Review of Proposed Expansions to Ensure Alignment with State Cost Containment and Health Equity Goals.** The DoN program should be updated to align with the focused assessments of need described above, along with cost growth, affordability, and health equity goals. In addition, given the significant potential for impacts on health care spending, quality, access, and equity of market expansions, the existing MCN process should be amended to require notice to the HPC before a provider substantially increases capacity.

ii. **Better Equip the State to Monitor and Respond to Essential Service Closures.** The Essential Services process could be improved through enhancing financial monitoring of providers who may be at-risk, earlier confidential notice of potential reduction in services or closure, broadening the scope of services covered, and allowing for sensitive information to be provided confidentially to better inform regulator response.

4. ADDRESS KNOWN MARKET DYSFUNCTIONS THAT BOTH DRIVE CONSOLIDATION AMONG PROVIDERS AND CREATE OPPORTUNITIES FOR PREDATORY ACTORS TO PROFIT THROUGH ACTIONS THAT CAN HARM PATIENTS, HEALTH CARE WORKERS, AND OTHERS.

A. Address Long-Standing Inequities in Provider Prices. Prices continue to be the primary driver of health care spending growth in Massachusetts. The significant variation in prices among Massachusetts providers for the same sets of services (without commensurate differences in quality) continues to divert resources away from smaller and/or unaffiliated community providers, many of which serve vulnerable patient populations, toward generally larger and more well-resourced systems. Commercial prices for health care services (including fee-for-service prices, global budgets, and other units of payment) and other contract terms are currently established exclusively through negotiations between payers and providers. Therefore, those prices generally reflect the bargaining leverage of the negotiating parties rather than differences in quality or other indications of value. As a result, providers often seek to consolidate with larger systems to gain bargaining leverage to command higher, excessive prices (and other favorable contract terms) from payers. Past market initiatives (e.g., tiered and narrow network products, price transparency efforts, risk contracting) have failed to meaningfully restrain provider price growth or reduce unwarranted variation in provider prices in Massachusetts. Many states (e.g., Rhode Island, Oregon, Colorado, and Maryland) have recognized that some level of price regulation is necessary, rather than market initiatives alone, to ensure an equitable and affordable health care system. Similarly, the Legislature should take action to compress unwarranted variation in prices between different providers and ensure that pricing reflects value, limit excessive commercial provider prices beyond reasonable benchmark amounts for the highest priced providers, and allow price increases to accrue appropriately to lower-priced providers. These include many community hospitals, community health centers, and other providers that care for populations facing the greatest health inequities, thereby strengthening the viability of critical community resources.

B. Require Site-Neutral Payment. Many routine health care services are safely provided in both hospital outpatient departments and non-hospital settings such as physician offices. Commercial prices and patient cost-sharing are generally substantially higher (often twice as high or more) at hospital outpatient sites due to the addition of a hospital payment component or "facility fee." In many cases, patients may not realize that pricing can be substantially higher at those sites licensed as hospital outpatient departments, and they face higher costs as a result. To limit these higher prices which often spur further hospital/physician consolidation and to enhance consumer protections, policymakers should take action to require site-neutral payments for certain ambulatory services that are commonly provided in office-based settings (e.g., office visits, lab tests, basic imaging and diagnostic services, and clinician-administered drugs).

C. Adopt Default Out-of-Network Payment Rate. The Legislature should enact the default out-of-network payment rate for "surprise billing" situations recommended by the Executive Office of Health and Human Services in its 2021 report. This would further constrain excessive provider prices and reduce a market dysfunction often utilized by private equity investors and others looking to profit in ways that do not deliver value to patients. Data from early implementation of the arbitration process established by the federal No Surprises Act (to resolve out-of-network provider payment disputes) demonstrate significant administrative challenges and disadvantages of relying on the federal arbitration process. The Commonwealth should join other states that have enacted a default rate for the fully insured market, with a potential opt-in for self-insured plans. A default rate would reduce the incentive for predatory market entrants, provide predictability, transparency, and simplicity, and reduce health care spending in Massachusetts. Establishing a default out-of-network rate is also a critical component of a policy response to long-standing pricing inequities.

As noted earlier, the effectiveness of these recommendations would be bolstered by complementary action on the HPC's policy recommendations from previous years. For example, the Commonwealth should prioritize planning, investments, and other policy efforts to enhance access for **primary care and behavioral health**. Current market forces often undervalue these services, leading to financial instability for important community providers, which ultimately contributes to disparities in access and outcomes as documented in this report.

Additionally, the Massachusetts **health care workforce** continues to experience substantial disruption, with high turnover and shortages of care providers in many roles throughout the care continuum. Recognizing bold new investments by the Healey-Driscoll Administration and the Legislature in health care workforce development, ongoing opportunities remain to stabilize, strengthen, and expand the health care workforce.

Related to workforce challenges, **administrative complexity** that does not add value permeates the U.S. health care system. These administrative and operational burdens on providers contribute to burnout, accelerate retirements, and influence provider decisions to pursue mergers, sales, or arrangements with management services organizations. Pursuing opportunities to reduce unnecessary administrative complexity for providers, such as in non-standardized prior authorization protocols, will further reduce the appeal of affiliation with potentially predatory actors.

Finally, the HPC reiterates significant concern regarding the unsustainable growth in **pharmaceutical spending trends**. Net of rebates, pharmacy spending per enrollee grew an average of 8.2 percent per year from 2019 to 2022, contributing significantly to the state's overall growth rate. The uptake of blockbuster drugs (e.g., GLP-1s) and the introduction of new high-priced gene therapies, among many other market developments, suggest these spending trends will continue. At a minimum, the Commonwealth should take action to increase transparency of drug price growth and value, as this sector continues to account for an increasing proportion of overall health care spending. Currently, there is little state oversight of pharmaceutical manufacturers and pharmacy benefit managers (PBMs), the key stakeholders that set drug prices and establish policies that influence how patients access pharmaceuticals. The Commonwealth should add pharmaceutical manufacturers and PBMs explicitly into the HPC's oversight authorities, authorize CHIA to collect data on pharmaceuticals from payers and PBMs, and consider other oversight such as licensure of PBMs and expansion of the HPC's authority to conduct reviews of drug pricing. By allowing these companies to operate outside the state's accountability framework and without providing data and information that other market actors are required to provide, the state risks further inviting predatory behavior that will act against the interests of the public and patients.

History has proven that the Commonwealth of Massachusetts and its leadership can deliver transformative change. This leadership, along with a renewed commitment by all stakeholders, is critical in this distressing moment for the Massachusetts health care system and broader public. The HPC stands ready to support these prospective efforts with its data insights and independent policy leadership.